

DOCKET FILE COPY ORIGINAL

WOLFSON & CARROLL
ATTORNEYS AT LAW
233 BROADWAY
NEW YORK, NEW YORK 10279
TELEPHONE (212) 233-0314
TELECOPIER (212) 227-6534

RECEIVED

FEB 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MICHAEL G. WOLFSON
JOHN W. CARROLL

JONATHAN WISE POLIER
OF COUNSEL

4, RUE DE MARIGNAN
75008 PARIS

TEL. (331) 47 23 41 51
FAX (331) 47 23 37 93

DOCKET FILE COPY ORIGINAL

February 25, 1993

RECEIVED

FEB 26 1993

FCC MAIL ROOM

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-²⁶⁶~~255~~

Dear Ms. Searcy:

Enclosed are an original and five copies of the reply comments of the International Planned Music Association Inc. in the above-referenced matter. These comments are late but we respectfully request that they be considered nonetheless and hereby make such an application.

The IPMA does not regularly participate in matters before the Commission and was unaware of this proceeding until after the filing deadline. Acceptance of these comments will serve the public interest by building a broader public record and will not prejudice any party since there is no provision for replying to reply comments.

Thank you for your attention to this matter.

Very truly yours,


John W. Carroll

JWC:rw
Encs.

No. of Copies rec'd
LIST ABOVE

015

DOCKET FILE COPY ORIGINAL EX PARTE OR LATE FILED

RECEIVED

FEB 26 1993

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

-----X
In the Matter of Implementation of
the Cable Television Consumer
Protection and Competition Act of
1992
-----X

MM Docket No. 92-266

RECEIVED

FEB 26 1993

FCC MAIL ROOM

REPLY COMMENTS

OF

THE INTERNATIONAL PLANNED MUSIC ASSOCIATION, INC.

By: JOHN W. CARROLL
WOLFSON & CARROLL
233 Broadway
New York, New York 10279
(212) 233-0314

RECEIVED

FEB 26 1993

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

-----X
In the Matter of Implementation of
the Cable Television Consumer
Protection and Competition Act of
1992
-----X

MM Docket No. 92-266

TO: THE COMMISSION

**REPLY COMMENTS OF THE INTERNATIONAL
PLANNED MUSIC ASSOCIATION, INC.**

The International Planned Music Association Inc. (IPMA), by its attorneys, Wolfson & Carroll, submits these reply comments (i) endorsing the comments filed on January 27, 1993 by Muzak Limited Partnership (MUZAK) and (ii) in support of the proposition that to fully implement the intent of Congress under the 1992 Cable Act the Commission must establish rules which preclude the cross subsidization of unregulated commercial cable audio services by subscribers to regulated residential cable services.¹

The IPMA is a trade association comprised of approximately 160 independent businesses which are Muzak franchisees. Its members provide subscription music and related sound and communications services throughout all of the 50 states. Together Muzak and its franchisees deliver subscription music to approximately 200,000 commercial establishments and in providing

¹IPMA recognizes that these reply comments are filed after the deadline and hereby requests leave to make this late submission. The IPMA did not become aware of this proceeding until after the deadline for reply comments. Acceptance of these comments would serve the public interest by building a broader public record in this proceeding and would not prejudice any party since there is no provision for replying to reply comments.

this service employ thousands of working men and women.

There is substantial competition in the subscription music industry. In addition to the many unaffiliated competitors IPMA members confronts in each market served by them, there are two companies, Audio Environments Inc. (AEI) and Minnesota Mining and Manufacturing Co. (3M), which compete with Muzak and its franchisees through a nationwide network of independent distributors. Whether a company is affiliated with Muzak, AEI, 3M or is unaffiliated, the basic costs of doing business remain similar. Each company must purchase its music; each must employ technicians; each must pay copyright licensing fees; and each must pay for the distribution of its music to subscribers. Although costs may vary significantly from market to market and within markets may vary slightly from one company to the next, at present in the subscription music industry, the economic playing field is essentially level. The advent of commercial cable audio services, however, threatens to eliminate this level playing field. It will be replaced with one tilted heavily, and in the IPMA's opinion unlawfully, in favor of cable systems which subsidize their commercial cable audio services with revenues derived from and physical plant paid for by regulated residential cable services. Because of this unlawful subsidization, commercial cable audio will have an improper advantage in its competition with traditional subscription music companies.

IPMA members and their traditional competitors distribute their product to subscribers by a variety of means including DBS,

FM SCA's, MDS, leased telephone lines, and on premise tape playback machines. With the exception of DBS each of these distribution vehicles generally delivers to the subscriber a single program or format of music. DBS is not so restricted and IPMA members offer their DBS customers up to 12 different channels or formats of music. However, the cost of delivering such a premium service is high. A typical DBS installation, including both labor and equipment, costs the IPMA member approximately \$700 and such IPMA member also pays a special surcharge to Muzak to help fund the overall DBS system. When competing with AEI or 3M distributors, or a local unaffiliated company, the IPMA member can expect that its competitors costs will be comparable. Indeed, for the most part, significant differences in price will relate to different levels of service, operating efficiencies or the paring of margins. In the final analysis the company which markets its product most effectively and delivers that product most efficiently will win. That's what competition is all about.

Distributors of commercial cable audio services however operate under a different set of realities. As a practical matter their distribution costs are ZERO because the product is delivered via a cable system which was created through the granting of a regulated monopoly and is paid for by the monthly fees of millions of residential subscribers.² Since commercial cable audio is a new

²The cable operators marketing costs for commercial cable audio also are significantly subsidized because of the free advertising over the cable system which accompanies the launch of cable audio services in a market.

service which has not yet been rolled out in all markets, reports from the field are somewhat anecdotal. In some cases the prices of commercial audio services reported to IPMA members are so low they can bear no relationship to cost. In others the prices are more in line with those typically charged by Muzak and its traditional competitors. The disparity in prices, however, underscores the problem. Absent a requirement that the cable system operator allocate to the commercial cable audio service the cost/value of the use of the cable systems distribution network and a requirement that that cost/value, plus a reasonable return, be reflected in the price charged for that service, the IPMA is convinced that millions of residential cable subscribers will unknowingly underwrite the entry of the cable industry into the subscription music industry. The profits generated by cable's monopoly service to residences will subsidize its predatory, below cost, pricing in the unregulated commercial market. The IPMA's concern is heightened by the fact that the two largest cable audio services, Digital Cable Radio and Digital Music Express, are each in significant part controlled by companies that are major MSO's.

CONCLUSION

The members of the IPMA believe in competition. They also believe in supporting not stifling technological innovation. If the cable industry has a better product and a better delivery system, it will prevail. The playing field, however, should be

kept level. Cable system operators should not be allowed to use revenues generated from their monopoly business to subsidize their entry into an unregulated business. If the cost/value of the cable channels made available to commercial cable audio is not reflected in the price for those services, the residential subscriber will inevitably pay a higher rate than he ought to because of this subsidization. This would be directly contrary to the intent of Congress in the 1992 Cable Act.

For the foregoing reasons the Commission should take steps to prevent cross subsidization and implement the accounting and other procedures outlined in the comments of Muzak.

Dated: New York, New York
February 25, 1993

Respectfully submitted,

INTERNATIONAL PLANNED MUSIC
ASSOCIATION, INC.

By: 

John W. Carroll
Wolfson & Carroll
233 Broadway
New York, New York 10279
(212) 233-0314